

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

ROBERT FOSTER, JR., and wife
LEDA FOSTER, d/b/a FOSTER
FUNERAL HOME, *et al.*,

Plaintiffs

v.

INDIANA INSURANCE COMPANY,

Defendant

No. 4:03-cv-34

MEMORANDUM AND ORDER

This declaratory judgment action was brought against Indiana Insurance Company seeking a declaration that certain insurance policies issued by Indiana to plaintiffs provided coverage for four underlying lawsuits filed against them. The four underlying lawsuits raised multiple theories regarding the plaintiffs' alleged failure to provide cremation services for deceased persons by using Tri-State Crematory, Inc. (Tri-State), to provide these services. In a memorandum opinion dated May 6, 2004, this court found that with respect to three of the lawsuits the policies in question provided coverage.

However, with respect to a lawsuit known as the *Hembree* lawsuit, a question of material fact remained with respect to whether the defendant timely notified plaintiffs that it would deny coverage. Accordingly, summary judgment was denied with respect to that claim. The *Hembree* action was resolved by the United States District Court for the Northern District of Georgia in a class action known as *In re: Tri-State Crematory Litigation*, MDL Docket No. 1467. The issue with respect to whether defendant in this case failed to provide coverage for the *Hembree* lawsuit has therefore been resolved and no question of material fact remains in this case. Accordingly, plaintiffs are granted summary judgment with respect to their claim on the *Hembree* lawsuit and this action is hereby DISMISSED.

E N T E R :

s/ James H. Jarvis

UNITED STATES DISTRICT JUDGE